

# TERMS AND CONDITIONS

## 1. Interpretation

### 1.1 In this Agreement, the following terms have the following meanings:

- (a) ADG means ADG Engineers (Aust) Pty Ltd (ACN 131 576 143);
- (b) Agreement means the agreement recorded in this document and includes the Fee Proposal and any special conditions agreed to in writing by both parties;
- (c) Background IP means Intellectual Property owned by, or vested in, ADG and which subsists in material, including methods of working and know how, created prior to the date of the Fee Proposal;
- (d) Business Day means any day other than a Saturday, Sunday, or a bank holiday or a public holiday in the state or territory in which the project is located for the purposes of clause 15;
- (e) Client means the person(s) or entity(ies) described in the correspondence;
- (f) Client's Representative means the person(s) or entity(ies) described in the correspondence
- (g) Consequential Loss includes any loss of income, loss of revenue, loss of profit, loss financial opportunity, financing costs, loss of business or business opportunity, loss of reputation (whether the loss is direct or indirect, loss of right to action, or such similar loss);
- (h) Continuity Event means a break in continuity of the Services, including where the Client fails to provide ADG with instructions to, or does not allow ADG to, continue progressing or performing the Services;
- (i) Fee means the money payable to ADG under this Agreement for the performance of the Services, as identified in the Fee Proposal, and as adjusted in accordance with this Agreement;
- (j) Fee Proposal means ADG's fee proposal, email communication or scope document (or combination of them) that describes the Services and the Fee;
- (k) Force Majeure Event means acts of God, war, civil disturbance, government action, strikes, lock-outs or labour disputes, computer viruses, pandemic (including COVID-19), acts of terrorism or any other event or circumstance beyond a party's reasonable control;
- (l) GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time, and any related legislation;
- (m) Insolvency Event means any of the following:
  - (i) the board of the relevant party passes a resolution that the company is insolvent, or is likely to become insolvent at some future time, and that an administrator of the company should be appointed;
  - (ii) the relevant party is placed into bankruptcy, administration, liquidation or is otherwise dissolved;
  - (iii) a deed of arrangement is entered in respect of the relevant party;
  - (iv) an application is made to a court for the winding up of the relevant party which is not stayed, withdrawn or otherwise disposed of within 21 days of when the application is served on the relevant party;
  - (v) the relevant party resolves that it be wound up voluntarily;
  - (vi) a winding up order is made in respect of the relevant party;
  - (vii) an administrator, receiver, receiver and manager or liquidator is appointed to the relevant party;
  - (viii) a court orders that there be a meeting of creditors or members of the relevant party;
  - (ix) a mortgagee takes possession of any assets of the relevant party; or
  - (x) the relevant party informs the other party or any of its creditors, in writing,

that it, he or she is insolvent or is unable to pay its debts as and when they fall due.

- (n) Intellectual Property means the proprietary rights which subsists in material, including methods of working and know how, created from intellectual activity, including copyright, moral rights and any other intellectual property right;
- (o) Loss means any loss, damage, expense (including debt recovery expenses and legal expenses on a solicitor and client basis and such expenses shall not be considered Consequential Loss for the purposes of this Agreement) incurred or suffered by ADG and any claim, action, demand or proceedings for payment of moneys under or in connection with the Agreement or the Services, or otherwise at law or in equity, including by statute, in tort or for restitution (including by third parties);
- (p) Other Expenses means the out of pocket expenses incurred by ADG for performing the Services which the Client is to pay to ADG in accordance with this Agreement and which are not stated as being included in the Fee or the Reimbursable Expenses;
- (q)
- (r) Reimbursable Expenses means the expenses which the Client is to pay ADG in addition to the Fee;
- (s) Services is described in the Fee Proposal (as varied from time to time in accordance with this Agreement);
- (u) Variation means:
  - (i) an increase or decrease to the Services including payment of a fee or charge by ADG in connection with the Services;
  - (ii) the performance of additional work by ADG including as required by law or a change to law; or
  - (iii) a change to the character or quality of the Services.

### 1.2 In the Agreement:

- (a) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, the Agreement and references to the Agreement include any schedules or annexures;
- (b) clause headings do not form part of, and must not be used in the interpretation of, the Agreement;
- (c) a reference to a party to the Agreement or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to a document or agreement (including a reference to the Agreement) is to that document or agreement as amended, supplemented, varied or replaced;
- (f) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (g) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (h) a reference to '\$' or 'dollar' is to Australian currency;
- (i) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', or 'for example' (or similar phrases) do not limit what else might be included; and
- (j) the singular includes the plural and vice versa, and a gender includes other genders.

1.3 To the extent of any inconsistency, the documents will have the following order of precedence: any special conditions agreed to in writing by both parties, the Fee Proposal and this Agreement.

## 2. Parties

2.1 To the extent the Client comprises of two or more persons or entities, the provisions of this Agreement bind each of them, and their respective executors, administrators, successors and permitted assigns, jointly and severally.

2.2 If the Client, or one of the entities constituting the Client, is a corporation, or a trust and ADG requires that the Client be personally guaranteed by its directors and/or principal shareholders, then the formation of this Agreement is subject to those guarantees in a form acceptable to ADG (acting reasonably) being executed and returned to ADG.

3. Obligations of Parties
- 3.1 ADG will provide the Services to the Client in accordance with the terms of this Agreement and, in providing the Services, shall exercise the degree of skill, care and diligence normally exercised by consulting engineers in similar circumstances.
- 3.2 In consideration of the performance of the Services, the Client shall pay to ADG in accordance with this Agreement:
- the Fee as adjusted in accordance with clause 4;
  - the Reimbursable Expenses; and
  - any Other Expenses incurred by ADG in respect of the Services and which are not stated as being included in the Fee or the Reimbursable Expenses.
- 3.3 The Client shall (whether personally or through its agents, employees, contractors or consultants, including the Client's Representative) make available to ADG, in a timely manner, all information, documents and assistance as is necessary or reasonably required by ADG to carry out the Services. The Client agrees that any information given to ADG by the Client is accurate and current and that ADG is entitled to rely upon it when performing the Services.
4. Variations
- 4.1 Where ADG is required to, or the Client requests ADG to, perform a Variation to the Services, ADG shall perform the Variation as far as it is reasonably practicable to do so.
- 4.2 The price of each Variation must be agreed between the parties or, if the parties fail to agree, the price will be determined by applying ADG's standard hourly rates with the inclusion of any additional disbursements or out of pocket expenses incurred by ADG in respect of the Variation. The price of each Variation will be added to or deducted from the Fee.
- 4.3 Should ADG be required to vary the Services due to the provision of inaccurate, superseded, inconsistent, ambiguous or delayed information, documents or assistance by the Client, ADG will also be entitled to be paid the additional costs incurred as a result as a Variation to the Services in accordance with clause 4.2.
5. Payment
- 5.1 ADG may claim payment of the Fee and the Reimbursable Expenses progressively at monthly intervals. Any claims for payment made by ADG must be in writing and given to the Client or the Client's Representative and include details of the Services performed, the Reimbursable Expenses incurred and any Other Expenses incurred by ADG in performing the Services. The Client shall pay ADG's payment claims within 30 days of the date of each claim.
- 5.2 Should the Client dispute the amount claimed by ADG (in whole or in part), the existence of the dispute, including reasons for it and the amount in dispute, shall be notified to ADG in writing within 14 days of the Client's receipt of the payment claim the subject of the dispute. The portion of any payment claim that is disputed shall remain payable to ADG by the Client in accordance within clause 5.1.
- 5.3 If the Client fails to pay ADG an amount due under this Agreement as required by clause 5.1, the Client shall pay interest on the amount outstanding to ADG until it has been paid in full at the rate referred to in section 67P of the Queensland Building and Construction Commission Act 1991 (Qld). Interest will continue to accrue on any amounts disputed by the Client and, if the dispute is resolved in ADG's favour (in whole or in part), the Client will pay ADG all interest which accrued in respect of any amount that is ultimately payable to ADG by the Client.
- 5.4 ADG may suspend performance of the Services by written notice to the Client if:
- the Client fails to pay an amount due to ADG in accordance with clauses 5.1 or 5.3; or
  - ADG has any reasonable concerns about the Client's solvency or capacity to continue to perform this Agreement.
- 5.5 If an amount remains outstanding to ADG or the Client fails to demonstrate its solvency or capacity to continue to perform this Agreement within 14 days of ADG's notice suspending the Services under clause 5.4, ADG may do one or both of the following:
- terminate this Agreement by further written notice; or
  - revoke the licence referred to in clauses 8.1 and 8.2(c), upon which the Client agrees that it will return to ADG all Intellectual Property provided to, and any copies made by, the Client.
6. Assignment and Novation
- 6.1 Neither party will assign, sublet, transfer or novate any right or obligation under this Agreement without the written consent of the other party.
7. Subcontracting
- 7.1 If ADG considers it appropriate to do so, it may, with the Client's prior written approval, which shall not be unreasonably withheld, engage with other consultants to assist with the provision of the Services.
8. Intellectual Property
- 8.1 All Intellectual Property created by ADG under this Agreement, whether Background IP or Intellectual Property created specifically in connection with the Project, vests with ADG and ADG grants the Client a royalty-free non-exclusive licence to use the Intellectual Property (including Background IP) for the purpose of completing the Project.
9. Insurance
- 9.1 ADG shall hold professional indemnity insurance and any other insurances as required by law. If requested, ADG shall provide a certificate of currency in respect of its professional indemnity insurance policy and other applicable policies to the Client.
10. Default and Termination
- 10.1 A party may terminate this Agreement upon written notice to the other party:
- in the case of ADG:
    - in accordance with clause 5.5 of this Agreement; and
    - if the Client directs ADG to suspend the performance of the Services (for any reason other than the occurrence of a Force Majeure Event) or there is a Continuity Event and the suspension or Continuity Event continues for a period of more than 90 days.
  - if the other party suffers an Insolvency Event;
  - if the other party is in material breach of its obligations under this Agreement and fails to take steps to remedy the breach within 14 days after receiving a notice from the non-defaulting party which requests that the breach be remedied; or
  - with the written consent of the other party, including as to the terms applicable to the termination.
- 10.2 If this Agreement is terminated pursuant to this clauses 5.5 or 10.1(a) to 10.1(c), the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing this Agreement had the defaulting party repudiated this Agreement and the non-defaulting party elected to treat this Agreement as at an end and recover damages.
11. Force Majeure
- 11.1 A party will be relieved from performance of an obligation (except any obligation to pay the Fee) under this Agreement where it is unable to perform the obligation due to the occurrence of a Force Majeure Event.
- 11.2 Where a party is prevented from performing an obligation because of the occurrence of a Force Majeure Event, the obligation will be suspended for so long and to the extent that it is affected by the Force Majeure Event. If a Force Majeure Event occurs:
- the affected party must give prompt written notice to the other party with details of the Force Majeure Event and the extent to which the party anticipates it will be unable to perform its obligations; and
  - the affected party will recommence performance of any suspended obligations as soon as possible after the Force Majeure Event ceases and give prompt notice of the cessation of the Force Majeure Event to the other party.
12. Dispute Resolution
- 12.1 If a dispute or difference between the parties arises in connection with the subject matter of the Agreement, including a claim at law, either party may give the other party a written notice of the dispute which adequately identifies and provides details of the dispute. Notwithstanding the existence of a dispute, except in relation to the exercise of a right to terminate this Agreement, the parties must continue to perform the Agreement.
- 12.2 Within 14 days after service of a notice of dispute, and as a condition precedent to the commencement of legal proceedings, the parties must confer in an attempt to resolve the dispute. If the dispute has not been resolved after the parties have attempted to resolve it, either party may commence legal proceeding, but this provision shall not prevent a party from commencing legal action to enforce payment due under the Agreement or to seek injunctive or urgent declaratory relief.
13. GST
- 13.1 To the extent that a party makes a taxable supply to the other for the purposes of the GST Act under this Agreement, the amount due to the supplying party will include an additional amount for GST at the prevailing GST rate.
14. General
- 14.1 Acceptance – these terms may be accepted, and will be deemed to be accepted, by the Client or its agent by either notifying ADG that this

- Agreement is accepted, giving ADG a purchase order or instructing ADG to provide the Services (in whole or in part).
- 14.2 Agency – if a Client’s Representative is identified, the Client acknowledges and agrees that it has appointed the Client’s Representative to act as the Client’s agent in respect of this Agreement and the Client’s Representative is authorised to execute this Agreement, and otherwise give instructions or act, or receive notices in accordance with clause 15, on the Client’s behalf. The Client’s Representative acknowledges and agrees that when acting on the Client’s behalf under this Agreement, it does so as agent of the Client.
- 14.3 Counterparts – this Agreement may be signed in any number of counterparts which together make one instrument.
- 14.4 Amendments – this Agreement may only be amended by written agreement between all parties.
- 14.5 No waiver – a right under this Agreement may only be waived in writing, signed by the party granting the waiver.
- 14.6 Entire agreement – this Agreement supersedes all previous agreements about its subject matter and this Agreement embodies the entire agreement between the parties and no prior representations or promises form part of this Agreement unless expressly stated. To the extent permissible by law, all terms and warranties implied by law (whether statute, common law or custom) are wholly excluded.
- 14.7 Remedies cumulative – the rights and remedies contained in this Agreement are cumulative and are not exclusive to any other rights or remedies provided at law unless expressly stated to the contrary in this Agreement.
- 14.8 Severance – if any part of this Agreement is, or is held to be, void or unenforceable, it may be severed from this Agreement and the remaining provisions shall continue in full force and effect.
- 14.9 Survival – clauses 5, 6, 8, 12, 14.2, 14.5, this clause 14.9, 14.10 to 14.16 (inclusive), 15 and 16 survive termination of this Agreement.
- 14.10 Confidentiality – the parties shall treat as confidential this Agreement, all documents, data, drawings, and all other information provided by one party to the other and shall not disclose the information except to their professional advisers or otherwise required by law.
- 14.11 Retention of documents – ADG may retain copies (whether electronically or otherwise) of all documents provided to it or produced by it under this Agreement for a period of up to 7 years after which ADG may, in its absolute discretion, destroy or dispose of the documents without reference to the Client.
- 14.12 Governing law and jurisdiction – the law of the state or territory in which the project is located govern this Agreement, except where the project is located outside of Australia in which case the jurisdiction shall be Queensland, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of that state or territory.
- 14.13 Consequential Loss – the parties are not liable to each other for Consequential Loss.
- 14.14 Delays – the Client acknowledges and agrees that ADG is not liable to the Client for any type of loss or damage suffered by the Client relating to any delay in the performance of the Services or the Client’s delivery of the Project.
- 14.15 Limitation of liability – to the extent permitted by law, ADG’s maximum liability to the Client under this Agreement, or otherwise at law, for all claims arising in respect of this Agreement shall not exceed three times the Fee that ADG receives under this agreement.
- 14.16 Indemnity – to the extent permitted by law, the Client indemnifies ADG against all Loss, whether arising at under the Agreement, at law or in equity, suffered by ADG as a result of any act or omission of the Client or its agents, employees, contractors or consultants, including the Client’s Representative, in connection with this Agreement, but such indemnity will be reduced to the extent that it is established that ADG caused or contributed to the Loss.
15. Notices
- 15.1 A notice, consent or communication under this Agreement, including a claim for payment, is effectively served on the recipient if it is in writing, addressed to the recipient to whom it is to be given (or where relevant, the recipient’s agent) and delivered by hand, prepaid post, fax or email to the recipient’s address stated in this Agreement, or as the recipient otherwise notifies the sender.
- 15.2 A notice given under clause 15.1 is given and received as follows, with the time expressed being the local time in the place of receipt:
- (a) if sent by email, at the time of receipt by the recipient’s mail server unless the sender receives an automated message generated by the recipient’s mail server the email could not be delivered; or
- (b) if sent by post:
- (i) 3 Business Days after posting, if sent within Australia; or
- (ii) 7 Business Days after posting, if sent to or from a place outside Australia.
16. Limitation of Liability for Services Relating to Non-Compliant Cladding
- 16.1. You agree to indemnify and hold ADG harmless from any liability or claim directly or indirectly connected with or arising out of any external insulation, finishing system, wall cladding or façade material that breaches the requirements or provisions of the NCC or any legislation relating to fire safety (Non-Compliant Cladding) to the extent permitted by law (under the law of contract, tort or otherwise).
- 16.2. If the clause above is found to be void or illegal for any reason, ADG’s liability to you directly or indirectly connected with or arising from Non-Compliant Cladding, whether under the law of contract, in tort otherwise, is limited to the fee paid by you for ADG’s services expressed in this fee proposal.